

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Alpheus Arrington, Baggage and Mail Handler formerly employed
TO) by Seaboard Coast Line Railroad Company and Chesapeake and
DISPUTE) Ohio Railway Company
and
Seaboard Coast Line Railroad Company and Chesapeake and Ohio
Railway Company

QUESTION

AT ISSUE: Was Claimant required to exercise his seniority on his seniority district even though it required a change in residence ?

OPINION

OF BOARD: The instant claim was initiated by Claimant's attorney under Article VI, Section 3, of the February 7, 1965 National Agreement, which abrogated Section 13 of the Washington Job Protection Agreement. In lieu thereof, the disputes provisions and procedures of the February 7, 1965 Agreement, were substituted therefor. In brief, Claimant was adversely affected as a result of a transaction whereby Carrier discontinued its passenger train operations at Main Street Station in Richmond, Virginia, on April 26, 1960. In subsequent litigation, the Court and the Interstate Commerce Commission determined that Claimant, and others, were entitled to protection under Section 5(2)(f) of the IC Act. Thus, the Carrier was required to protect the adversely affected Main Street employees to the extent of the Washington Job Protection Agreement as modified by the Oklahoma Conditions--which substituted Oklahoma Condition 5 for WJP 7(a).

In this context, Claimant's position of baggage and mail handler was abolished on April 25, 1959. Thereafter, Claimant elected to stay at Richmond and protect extra work only at that point. Hence, the crux of the instant dispute revolves around the interpretation of Section 6(a) of the Washington Job Protection Agreement, hereinafter quoted:

"No employee of any of the carriers involved in a particular coordination who is continued in service shall, for a period not exceeding five years following the effective date of such coordination, be placed, as a result of such coordination, in a worse position with respect to compensation and rules governing working conditions than he occupied at the time of such coordination so long as he is unable in the normal exercise of his seniority rights under existing agreements, rules and practices to obtain a position producing compensation equal to or exceeding the compensation of the position held by him at the time of the particular coordination, except however, that if he fails to exercise his seniority rights to secure another available position, which does not require a change in residence, to which he is entitled under the working agreement and which carries a rate of pay and compensation exceeding those of the position which he elects

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"to retain, he shall thereafter be treated for the purposes of this section, as occupying the position which he elects to decline."

The Carrier concedes that Claimant was adversely affected as a result of the transaction in April, 1959. It further concedes that for the period of May 1, 1959 through March 21, 1960, Claimant's seniority did not entitle him to regular employment. However, beginning with March 22, 1960 through April, 1964 --the termination of the five year protective period provided by WJP 6(a)--Claimant could have obtained a regular position at Gladstone, Virginia, and other points, on his seniority district. As previously indicated, Claimant elected to protect extra work only at Richmond.

Thus, it is readily apparent that the parties are in disagreement as to the interpretation to be placed on Section 6(a). Claimant, through his attorney, argues that the language contained therein did not require him to exercise his seniority rights to obtain a position which required a change of residence. Conversely, Carrier contends that the affected employee was first required to exercise his seniority rights to a position located within his seniority district. If no position is available to him at the point where previously employed he is then required to exercise his seniority on his seniority district which may require a change in residence. Thereafter, the exception comes into play, namely, where another higher-rated position becomes available, then he may elect to retain his present position, instead of opting for the higher-rated position which would require a change of residence.

This particular facet of Section 6(a) is one of first impression. Was an adversely affected employee required to exercise his seniority rights within his seniority district, even though it required a change of residence? The Carrier, by analogy to other documents and proceedings, asserts that the intent of the Commission and of RLEA can be gleaned from a review of the arguments presented not only in the litigation preceding the instant dispute, but in other transactions. The essence of these citations substantiate the holding that affected employees are required to exercise their seniority rights to available positions within their seniority district, though it entailed a change of residence.

We have carefully analyzed Section 6(a) of the Washington Job Protection Agreement. In our view, we find that the phrase, "except however, that if he fails to exercise his seniority rights to secure another available position, which does not require a change in residence," is basically a condition subsequent. Thus, the condition precedent--the affected employee is required to exercise his rights to an available position in his seniority district--must first have occurred. Hence, an affected employee can not restrict his availability to one point on his seniority district and expect his compensation to continue for the protective period where other positions are available in his seniority district, albeit a change of residence would be required.


Therefore, it is our considered opinion that the claim must be denied.

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AWARD:

The answer to the question is in the affirmative.

Claim Denied.


MURRAY M. ROHMAN
Neutral Member

Dated: Washington, D. C.
October 27, 1971